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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FCC 96-214

In the Matter of

Allocation of Costs Associated with
Local Exchange Carrier Provision of
Video Programming Services

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CC Docket No. 96- 112

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**COMMENTS OF THE
ALABAMA PUBLIC SERVICE COMMISSION**

Submitted by,

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SUMMARY OF COMMENTS

The Alabama Public Service Commission agrees with the Commission's goals and objectives in the Notice of Proposed Rulemaking in the CC Docket No. 96-112. We commend the Commission on its expeditious treatment of this issue. We agree that video programming services is only the first of many nonregulated services that will be provided over the same facilities as the regulated services of the Local Exchange Carriers (LEC). The Telecommunications Act of 1996 clearly mandates that the Commission and state regulators ensure that there is no subsidization of the competitive services by the basic regulated services of the LECs. There is a pressing need to amend the Part 64 rules to recognize the post 1996 Act environment.

We agree with the Commission's intent to prescribe specific cost pools and allocation factors in this proceeding. We further agree that direct assignment of loop costs is impractical in this new environment. The same facilities will be used by both regulated and nonregulated, competitive and noncompetitive services. The usage patterns of the different services are very different and a usage based allocation method would be both administratively burdensome and would not provide reasonable results. We agree with the Commission's tentative conclusion to use a fixed allocation factor. We agree that the 1996 Act did not intend for any competitors to be subsidized by the basic services. We concur in the proposal to allocate network expenses based on the network allocation and to change the allocation method of maintenance expenses. We share the Commission's concerns regarding spare facilities and support its proposal to create specific cost pools for spare capacity.

We believe that any new allocation rules under Part 64 should apply to all LECs including those that are regulated under price caps. We strongly believe that current ratepayers should receive the benefits of the network they paid to build being used jointly for both regulated and nonregulated service.

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**COMMENTS OF THE
ALABAMA PUBLIC SERVICE COMMISSION**

The Alabama Public Service Commission (APSC or Alabama PSC) hereby submits its initial comments pursuant to the Federal Communications Commission's (FCC or Commission) Notice of Proposed Rulemaking (NPRM) in CC Docket No. 96-112, Allocation of Costs Associated with Local Exchange Carrier Provision of Video Programming Services. The FCC proposes in the NPRM to amend its cost allocation rules and procedures to accommodate an incumbent local exchange carrier's use of the same network facilities to provide video programming and other competitive offerings not subject to Title II regulation, as well as telephony and other Title II offerings. The Alabama Public Service Commission offers the following comments in response to the above referenced Notice of Proposed Rulemaking.

I. INTRODUCTION

The Telecommunications Act of 1996 (1996 Act) replaced the statutory prohibition against incumbent local exchange carrier (LEC) provision of video programming directly to subscribers in its telephone service area. We agree there is a need to amend the Commission's cost allocation rules

and procedures to accommodate an incumbent LEC's use of the same network facilities to provide video programming service and other competitive offerings and commend the Commission on its efforts to address this problem so expeditiously.

The APSC shares the Commission's belief that video programming is likely to be only the beginning of many major competitive services being provided jointly with regulated services. The market for new services using both existing and new technologies will evolve over time. The usage of the network as it exists today will also evolve. No one can accurately predict how the network will evolve in response to the market or what level of usage on the network will be attributable to regulated service and what part will be necessary for the nonregulated services. In response to the Commission's question regarding whether and how procedures established in this proceeding should be applied to incumbent local exchange carrier provision of video programming service and other competitive offerings by these companies, we believe the procedures should apply to an LEC whenever it is providing any competitive service using the same network it uses to provide regulated services. We also believe that any procedures adopted in this proceeding should be reviewed on a regular basis to determine if they are still appropriate for the assignment of cost for commonly used facilities as both the markets and the technologies progress.

The 1996 Act clearly states that a telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition.¹ The Act specifically provides for both the Commission with respect to interstate services, and the states with respect to intrastate services, when it stated in the 1996 Act that both the Commission and the States shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included

¹ Telecommunications Act of 1996 § 254 (k)

in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.² This NPRM provides the first step in addressing the Congressional mandate to ensure there is no subsidy to competitive services from the noncompetitive services. Congress clearly recognized that such a subsidy could evolve by assigning more than a reasonable share of common and joint costs of facilities used to the provision of the noncompetitive services.³

The APSC agrees with the FCC that there is an immediate need to address the allocation of joint and common costs between regulated and nonregulated services in the post 1996 Act environment. We offer the following comments on the issues raised in the NPRM.

III. DISCUSSION

A. Goals and Purpose

The Alabama PSC agrees that the purpose of the cost allocation proceeding is not to protect competitors in video service or other competitive markets. We further agree with the Commission's intention to allocate a significant part of common costs to nonregulated services. We strongly support the Commission in its conclusion that telephone ratepayers are entitled to at least some of the benefit of the economy of scope between telephony and competitive services. The APSC concurs in the Commission's intention to establish a system of cost allocation principles that inhibit carriers from imposing on ratepayers the costs and risks of competitive, nonregulated ventures, including nonregulated video service ventures. We agree the principles must balance: administrative simplicity; adaptability to evolving technologies; uniform application among incumbent LECs; and, consistency

² § 254(k)

³ § 254(k) and *Conference Report* at 129

with economic principles of cost-causation.⁴

B. Cost Pools and Allocation Methods

We concur in the Commission's tentative conclusion to prescribe specific cost pools and allocation factors in this proceeding for allocating video programming and other nonregulated service costs. Uniformity will reduce the administrative burden on all parties and tend to foster competition. It will assist in determining equitable allocations are being made by all incumbent LECs. The Commission requests comments on whether this proceeding should prescribe specific rules for the allocation of video programming service costs or whether general guidelines could ensure realization of the goals identified. The APSC believes that any rules the Commission adopts should be as specific as possible while maintaining the ability to adapt its rules to the evolving markets. We agree video services may be the first significant nonregulated activity, but also believe it will not be the last. The Commission has been reviewing issues surrounding video services provided by the LECs in the many video trials that have been ongoing over the last few years. It is perhaps, therefore, in a better position to be more specific in its rules as they apply to this service. The amount of specificity to some extent will be dependent on the proposed nonregulated service to be provided jointly over the network.

1. Loop Plant

The APSC agrees that the developing changes in telecommunications technology make direct assignment of loop cost impractical since the same loop facilities will also be used for regulated activities.

Allocations made on a relative usage measurement also do not appear to be appropriate for

⁴ NPRM ¶ 24

the new environment of regulated and nonregulated services being provided over the same facilities. As discussed in the NPRM⁵, the type of usage patterns of video services and voice -grade service are totally different. Some methodology would have to be developed to attempt to make the usage patterns equivalent to determine the allocation based on some usage factor. Attempts to allocate common costs on this basis would be much more burdensome administratively and would likely produce questionable results. This method would not give the assurance required by the 1996 Act that the costs were correctly allocated between regulated and nonregulated services.

The APSC does not believe that an allocation based on a ratio of directly assigned plant should be used. As was discussed in the NPRM, loop plant is a non-traffic sensitive cost that has traditionally been assigned to regulated services. There is a real danger that an insufficient amount of loop costs will be directly assigned to nonregulated services, which would make the resulting allocation of common cost too low. This approach would be more susceptible to manipulation.

The Commission tentatively concludes that it should prescribe a fixed factor for allocating loop plant common costs between regulated and nonregulated activities. The Commission believes that usage-based allocations for loop plant would preclude its achieving the best possible balance of its states goals and objectives in this proceeding. The Alabama PSC agrees and supports the Commission's conclusion to allocate loop costs by employing a fixed allocation factor. The Commission has used this methodology, as noted in the NPRM, to allocate loop cost and other costs between jurisdictions. Those decisions were based on extensive work by both the Commission and state regulators through the joint board process and upheld by the United States Court of Appeals for the District of Columbia Circuit.

⁵ NPRM at ¶ 30-31

The cases referenced in footnotes 52 and 53 of the NPRM reflect a range of possible allocation factors of from 50% to 72% of the local loop costs to the nonregulated services. The adoption of a fixed allocation factor of 50% would appear to be conservative. The APSC can support the use initially of a 50% fixed allocation factor. As competition develops and new services and uses of the loop develop, however, this allocation may not be sufficient and will need to be revised in order to comply with the requirements of the 1996 Act. We believe that the allocation factor determined by the Commission will need to be reviewed on a recurring basis to ensure the nonregulated services are not being subsidized by the regulated services.

The APSC concurs in the Commission's position that the demand for telephone service is at present highly inelastic.⁶ We also agree with the Commission's assessment that without regulatory intervention or workable competition, incumbent LECs have the ability to shift to telephone ratepayers a large portion of the costs of facilities used for both regulated and nonregulated activities.⁷ We agree that the fixed factor allocation method rather than a relative demand allocator will better ensure that ratepayers will not bear the costs or risks of competitive ventures.

C. Methods for Allocating Expenses

The APSC concurs in the Commission's proposal to allocate network related expenses based on the network plant allocation. We also believe the Commission's tentative conclusion to change the method of allocation of maintenance expenses has merit and should be considered. Use of the same fixed factor for the maintenance expense as is used for the plant would meet the goals and objectives of the Commission in this proceeding.

⁶ NPRM ¶ 41

⁷ Id.

D. Allocation of Spare Facilities

The Alabama PSC shares the Commission's concerns regarding the issues of spare facilities and the network improvements incumbent LECs make in anticipation of future competition in their core markets. We concur that Congress did not intend that telephone exchange service or exchange access subscribers pay rates designed to recover the costs of spare capacity that eventually will be used for video programming or other competitive services. The level of total spare fiber reflected in FCC Report 43-08 (1991-1994) raises serious concerns.⁸ This existing spare capacity has been and is still being supported by regulated services. The level of spare fiber as a percent of total fiber deployed for the four years included in the report ranges from 63% to 70%. These spare facilities would appear to position the incumbent LECs very well to rapidly enter the video programming service at less costs. If these cost continue to be recovered from the regulated services it will create a distorted competitive environment for video programming service. The Commission should create specific cost pools for the costs associated with spare facilities. It is necessary in this new environment clearly identify these facilities and costs in order to ensure that regulated services are not supporting investment intended to be used for competitive service.

IV. TREATMENT OF COST REALLOCATIONS UNDER PRICE CAP REGULATION

The 1996 Act clearly intended to promote competition in the existing telecommunications markets but it also made clear that this competition was not to be supported by the ratepayers in the prices they payed for basic regulated service. The reallocation of costs to nonregulated services is meaningless if that reallocation is not reflected in the prices for regulated services. The existing price

⁸ See NPRM footnote 60

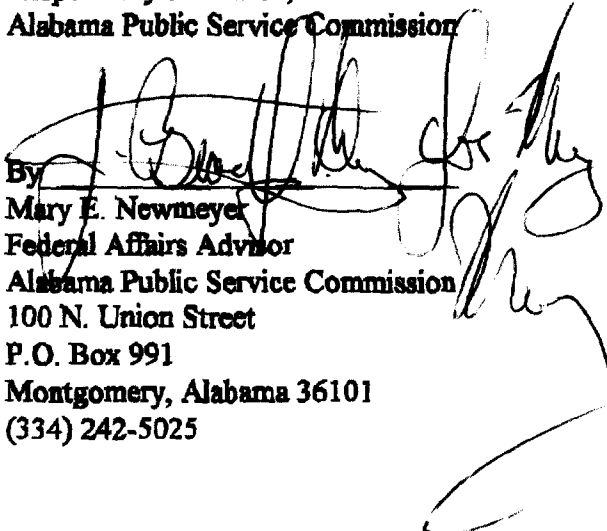
cap indices were determined on costs that were allocated to regulated services under the present Part 64 requirements. The reallocation of substantial costs to nonregulated services clearly requires reduction in the price cap indices. The incentives for price cap carriers to enter video and other competitive, nonregulated services should not be negatively influenced by the reallocation of costs. Any viable business plan must be based on actual conditions. A system that subsidizes any one participant in the competitive market distorts the market for all. If these costs are not reallocated to reflect the actual cost of the incumbent LECs entering competitive markets, then we have gained nothing from the Telecommunications Act of 1996. We will have competition in name only.

The need for Part 64 processes exist for all price cap carriers, including those not subject to sharing obligations. The premise behind price caps was that it create the incentive to provide the services more efficiently and encourage the deployment of new technologies and services. The existing network that has been supported and built on the revenues from regulated services will allow these companies to provide a wide range of nonregulated services. The price indices on which these companies based their present rates included substantial costs that are being proposed to be reallocated. As the Commission noted previously, this proceeding is not intended to protect competitors in video services or other competitive markets. Not requiring all price cap carriers to flow through to the regulated services the effects of the reallocation of cost would in fact protect competitors in competitive markets. It would also not comply with the requirements of the 1996 Telecommunications Act to assure that the basic services are not subsidizing the nonregulated competitive services.

V. CONCLUSION

The Alabama PSC commends the Commission for its actions in this proceeding to address the reallocation of joint and common costs of facilities used for both regulated and nonregulated services including video programming service and other nonregulated services. We support the Commission's intention to allocate a substantial part of common costs to nonregulated services. We agree that a fixed allocation factor for the non-traffic sensitive loop plant would be the most appropriate allocator to meet the goals and objectives of the Commission in this proceeding. The APSC supports the usage of a 50% factor initially, but believes this percentage must be reviewed frequently as competitive services being offered increase and technologies change. We believe the Part 64 processes should apply to all incumbent LECs, including those under price cap regulation. We respectfully offer the above comments for consideration in these proceedings.

Respectfully submitted,
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